

DOCKET NO.: HHB-CV-18-6047263-S

SUPERIOR COURT

ANN MACILVIN

JUDICIAL DISTRICT OF  
NEW BRITAIN

v.

TAX AND ADMINISTRATIVE  
APPEALS SESSION

TOWN OF FAIRFIELD, OFFICE OF  
TAX COLLECTOR

OCTOBER 3, 2023

OFFICE OF CLERK  
SUPERIOR COURT  
NEW BRITAIN  
OCT - 3 P 3:16

**MEMORANDUM OF DECISION**

The parties, the plaintiff, Ann Macilvin, and the defendant, the Town of Fairfield, Office of the Tax Collector, cross move for summary judgment. For the reasons set forth below, the court grants Fairfield's motion for summary judgment and denies Ms. Macilvin's. The plaintiff proceeds in two counts asserting claims pursuant to General Statutes §§ 12-117a and 12-119.

**FACTS**

The material facts of this matter are not in dispute. Ms. Macilvin is the owner of real property located at 3388 Black Rock Turnpike in Fairfield (the subject property). Ms. Macilvin has been the owner of the subject property since 1997. The parties agree that the actual size of the subject property is 1.06 acres. Nevertheless, since Ms. Macilvin's ownership of the subject property, Fairfield has taxed the subject property as if it were 1.6 acres. In August of 2017, Ms. Macilvin discovered Fairfield's mistake and brought that mistake to the attention of the Fairfield assessor. The assessor immediately made the relevant changes to the Subject Property's field card and Fairfield issued tax credits to Ms. Macilvin for the 2014, 2015, 2016, 2017, and 2018 tax years. Ms. Macilvin paid higher real property

Electronic notice sent to: DIT Attorney Kevin Smith  
and Patty Catherine Greaser. A. Jordanopoulos, Ct Officer 10-3-23

taxes to Fairfield from 1997 through 2016 based on the erroneous fact that the subject property was thought to be 1.6 acres in size.

### LEGAL STANDARD

“Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried.” (Internal quotation marks omitted.) *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 534-35, 51 A.3d 367 (2012). “In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact ... [is] a fact which will make a difference in the result of the case. . . .” (Internal quotation marks omitted.) *Stuart v. Freiberg*, 316 Conn. 809, 820-21, 116 A.3d 1195 (2015); see also Practice Book § 17-49.

### ANALYSIS

The court concludes that the outcomes of the parties’ cross motions for summary judgment are controlled by the Appellate Court’s holdings in *Peerless Realty, Inc. v. City of Stamford*, 211 Conn. App. 441, 272 A.3d 1150 (2022) (hereinafter *Peerless*).

In *Peerless*, the Appellate Court considered a claim by a taxpayer for relief where the Stamford assessor erroneously recorded the taxpayer's property as being 1.15 acres in size rather than 0.89 acres. *Id.*, 443. The taxpayer had been paying the increased taxes associated with the larger acreage since 1995. *Id.* When the error was brought to the attention of the Stamford assessor in 2017, the city gave the taxpayer a tax refund going back three years to the 2014 tax year. *Id.*, 444. The trial court granted summary judgment in favor of the city.

In affirming the holding of the trial court, the Appellate Court ruled, "Section 12-60 provides the procedure for the correction of a clerical omission or mistake in the assessment of taxes. A request for correction must be made 'not later than three years following the tax due date relative to which such omission or mistake occurred . . . .' General Statutes § 12-60. Section 12-129 provides the taxpayer with a procedure to follow in order to obtain a refund of taxes paid in excess due to 'a clerical error on the part of the assessor or board of assessment appeals . . . .' As in § 12-60, an application for a refund must be made 'three years from the date such tax was due . . . .' General Statutes § 12-129. Further, § 12-129 specifically provides in relevant part that 'any payment for which no timely application is made or granted under this section shall permanently remain the property of the municipality. . . .'" *Id.*, 455.

The Appellate Court continued that "[s]ection 12-117a sets forth the process for those 'claiming to be aggrieved by the action of the board of tax review or the board of assessment appeals . . . .' An application must be made 'within two months from the date of the mailing of notice of [the board's] action . . . .' General Statutes § 12-117a. The section 'provides a method by which an owner of property may directly call in question the valuation placed by

assessors upon his property . . . .” Id. “Section 12-119 addresses the procedure applicable when, *inter alia*, ‘a tax . . . was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property . . . .’ Pursuant to § 12-119, application for relief must be made to the Superior Court ‘prior to the payment of such tax’ and ‘within one year from the date as of which the property was last evaluated for purposes of taxation . . . .’ [O]ur Supreme Court determined that ‘the procedure available in § 12-60 was more than sufficient in providing the plaintiff taxpayer a method by which a refund could be obtained[.]’” Id., 455-56.

The reasoning for this determination is that “[p]ublic policy requires . . . that this court not permit taxes collected or paid to be the subject of perpetual litigation, at any time, to suit the convenience of the taxpayer.” (Internal quotation marks omitted.) Id., 456; citing to *Danbury v. Dana Investment Corp.*, 249 Conn. 1, 15, 730 A.2d 1128 (1999) (“The rationale for this rule is the need on the part of the government for fiscal certainty. A municipality, like any governmental entity, needs to know with reasonable certainty what its tax base is for each fiscal year, so that it responsibly can prepare a budget for that year.”). Finally, “a taxpayer who has not sought redress in an appropriate manner is foreclosed from continuing litigation outside of title 12.” (Internal quotation marks omitted.) *Peerless*, supra, 211 Conn. App. 456.

The Appellate Court concluded that “we are satisfied that the provisions of §§ 12-60, 12-117a, 12-119, and 12-129 together create a statutory scheme that is sufficient to redress the plaintiff’s grievances, regardless of how the error occurred. . . . Specifically, because the

provisions of title 12 provide sufficient procedures in cases in which excess taxes are paid due to clerical errors, improper property valuation, and 'manifestly excessive' assessments; General Statutes §§ 12-60, 12-117a, 12-119, and 12-129; the cause of the current error is irrelevant: no matter how the error occurred, the provisions of title 12 provide a process through which the plaintiff could have sought relief." (Citation omitted.) Id., 456-57.

This court concludes that the holdings of the *Peerless* court are controlling and dispositive in this case. Regardless of how the error occurred with respect to the erroneous recordation of the size of Ms. Macilvin's property, she is limited to recovery of three years of back taxes. Since it is undisputed that Fairfield has already provided this relief, there is no further relief that this court may properly grant and, therefore, Fairfield is entitled to judgment as a matter of law.

#### CONCLUSION

For all the foregoing reasons, the court grants the motion for summary judgment filed by the Town of Fairfield Office of the Tax Collector and denies the motion for summary judgment filed by the plaintiff, Ann Macilvin.

 , J.  
Budzik